

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

XINHUA FINANCIAL NETWORK,

*Petitioner,*

*U.*

UNITED STATES OF AMERICA,

*Respondent.*

Civil Action No. 04 cv 08403(DC)

## DECLARATION OF GERALD C. MILLER

Gerald C. Miller, pursuant to the provisions of 28 U.S.C. § 1746, says as follows:

1. I am an attorney of the Tax Division of the United States Department of Justice, and currently, and for approximately 20 years, have served as a Reviewer in the Civil Trial Section, Northern Region, of the Tax Division.
2. The Civil Trial Section, Northern Region, is responsible for the conduct and supervision of all civil tax and tax-related litigation in the district courts of the United States and in state courts in eleven states, including New York.
3. In my position I have acquired personal knowledge and experience concerning the handling of mail at the Department of Justice; furthermore, because the above-titled action has been assigned to me, I have particular knowledge concerning the Tax Division file relating to it. Incoming certified or registered mail addressed to the Attorney General of the United States transmitting a summons as one element of the requirement for effecting service of process upon the United States under Rule 4 of the Federal Rules of Civil Procedure is, in the ordinary course, forwarded to the division and trial section responsible for the conduct or supervision of the litigation. A summons issued to the United States in the above-titled action and received by certified or registered mail by the Department of Justice in Washington, D.C. would have been forwarded to the Civil Trial Section,


Northern Region, of the Tax Division.

4. When a summons is received by the Civil Trial Section, Northern Region, of the Tax Division indicating the initiation of an action against the United States, a file is created for that matter, and an entry, indicating the opening of the file, is made in the Tax Division's electronic case management system.

5. The Civil Trial Section, Northern Region, of the Tax Division has no record of receipt of a summons issued to the United States in the above-titled action. The Tax Division's file, which is in my possession, was opened based upon a letter referring to the above-titled action received from the Office of Chief Counsel, Internal Revenue Service. That letter, received by the Tax Division on, or about, November 9, 2004, is the first, and only, paper received by the Tax Division relating to the above-titled action, and the file does not contain any summons issued to the United States in the above-titled action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of November 2004 at Washington, D.C.

  
GERALD C. MILLER  
Reviewer  
Civil Trial Section, Northern Region  
Tax Division, U.S. Dept. of Justice  
P.O. Box 55, Ben Franklin Sta.  
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